THE BOMBAY PROBATION OF OFFENDERS ACT, 1938.

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BOMBAY ACT No. XIX OF 1938.[1]

[THE BOMBAY PROBATION OF OFFENDERS ACT, 1938.]

[*28th October 1938.*]

Amended by Bom. 17 of 1945.†
Rep. in part by Bom. 38 of 1947.
Amended by Bom. 23 of 1949.

An Act to provide for the release on probation of offenders.

WHEREAS it is expedient to provide for the release on probation of offenders in certain cases and for other matters incidental thereto; It is hereby enacted as follows :—

Short title, extent and commencement.

1. (*1*) This Act may be called the Bombay Probation of Offenders Act, 1938.

(*2*) It extends to the whole of the Province of Bombay.

(*3*) This Act shall come into force in such area and on such date as the Provincial Government may, by notification in the Official Gazette, direct.

Definitions.

V of 1898.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) the " Code " means the Code of Criminal Procedure, 1898;

(*b*) " Court " means a Court empowered to exercise powers under this Act;

(*c*) " Probation order " means an order made under sub-section (*1*) of section 5;

(*d*) " recognised society " means a society recognised by the Provincial Government for the purposes of section 10;

(*e*) " supervision order " means an order made under sub-section (*2*) of section 5; and

(*f*) words and expressions used but not defined in this Act shall have the meanings assigned to them in the Code.

Courts empowered to pass orders under the Act.

3. (*1*) The following courts are hereby empowered to exercise powers under this Act, namely :—

(*a*) the High Court,
(*b*) a Court of Session,
(*c*) a District Magistrate,
(*d*) a Sub-Divisional Magistrate,
(*e*) a salaried Presidency Magistrate,
(*f*) a Magistrate of the first class,
(*g*) any other Magistrate specially empowered in this behalf.

(*2*) The powers conferred under sub-section (*1*) may be exercised by such Courts, whether the case comes before them originally or on appeal or in revision.

(*3*) Where any offender is convicted by a magistrate not empowered to exercise powers under this Act, and such magistrate is of opinion that the powers conferred by section 4 or 5 should be exercised, he shall record his opinion to that effect and submit the proceedings to a Magistrate of the first class or Sub-Divisional Magistrate forwarding the offender to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by section 380 of the Code.

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[1] For Statement of Objects and Reasons, *see Bombay Government Gazette*, 1938, Part V, pp. 18 and 19; for Report of the Select Committee, *see Bombay Government Gazette*, 1938, Part V, pp. 178-181; for Proceedings in Assembly, *see* Bombay Legislative Assembly Debates, 1938, Vol. 2, pp. 411-439, 835-848, and also Vol. 3, pp. 2771-2772; and for Proceedings in Council, *see* Bombay Legislative Council Debates, 1938, Vol. 3, pp. 350-526.

†This Act was repealed and re-enacted and the amendments made by section 9 and Schedule E to the said Act have been continued in force by Bom. 52 of 1947, s. 2.

Power of Court to release certain convicted offenders after admonition.

4. Notwithstanding anything contained in any enactments for the time being in force in any case in which a person is convicted of any offence punishable with not more than two years' imprisonment or fine or both and no previous conviction is proved against him, the Court by which he is so convicted, may, if it thinks fit having regard—

(*a*) to the age, character, antecedents or physical or mental condition of the offender, and

(*b*) to the nature of the offence or any extenuating circumstances under which the offence was committed

for reasons to be recorded in writing instead of sentencing him to any punishment, release him after due admonition.

Power of Court to release certain convicted offenders on probation of good conduct.

5. (*1*) Notwithstanding anything contained in any enactment for the time being in force, when—

(*a*) any male person is convicted of an offence not punishable with death or transportation for life, or

(*b*) any woman is convicted of an offence of any kind,

if it appears to the Court by which the offender is convicted, that regard being had to the age, character, antecedents or physical or mental condition of the offender, or to the circumstances in which the offence was committed, it is expedient that the offender should be released on probation of good conduct, the Court may, for reasons to be recorded in writing instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period not being less than one year and not exceeding three years as the Court may direct, and in the meantime to keep the peace and be of good behaviour.

[1]* * * * *

(*2*) Where the offender appears to the Court to be under the age of twenty-five years, the Court may for reasons to be recorded in writing make an order, hereinafter called a supervision order, directing that the bond to be entered into under sub-section (*1*) shall contain a condition that the offender shall be under the supervision of a probation officer named in the order during the period specified therein and such other conditions as in the opinion of the Court may be necessary for securing such supervision :

Provided that the period so specified shall not extend beyond the date on which, in the opinion of the Court, the offender shall attain the age of twenty-six years.

(*3*) While making a supervision order the Court may also direct that the bond shall contain such additional conditions with respect to residence, abstention from intoxicants and any other matters which the Court may, having regard to the particular circumstances of the case, consider necessary for preventing a repetition of the same offence or a commission of other offences by the offender.

(*4*) A Court making a supervision order shall furnish the offender with a written statement of the conditions which he is required to observe.

Report of probation officer before making release, probation or supervision order.

[2][**5A.** (*1*) Before making an order of release under section 4, or a probation or supervision order under section 5, the Court may require any probation officer to submit to it a report as to—

(*a*) the character and age of the offender,

(*b*) the antecedents of the offender and the circumstances in which he is living, and

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[1] The proviso to section 5 (*1*) was deleted by Bom. 38 of 1947, s. 2.

[2] This section was inserted by Bom. 23 of 1949, s. 2.

(c) such other matters as may, in the opinion of the Court, require to be taken into consideration before making such order.

(2) Any report submitted by the probation officer under sub-section (1) shall be treated as confidential:

Provided that the Court may, if it thinks expedient, communicate the substance thereof to the offender and may give the offender an opportunity to produce evidence as may be relevant to the matters stated in the report.]

Power of Court to require released offender to pay damages and costs and recovery of such damages and costs.

6. (1) A Court directing the release of an offender under section 4 or section 5 may order the offender to pay such compensation for loss or injury caused to any person by the offence and such costs of the proceedings as the Court thinks reasonable:

Provided that the amount of compensation and costs so awarded shall in no case exceed the amount of fine which the Court could have imposed in respect of the offence.

(2) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under sub-section (1).

(3) The amount ordered to be paid under this section may be recovered as a fine in accordance with the provisions of sections 386 and 387 of the Code.

Appeal and powers and court in appeal and revision.

7. (1) Notwithstanding anything contained in the Code except in cases in which the offender has pleaded guilty, or where the order is passed by the High Court, an appeal shall lie from an order of conviction in every case in which an order is passed under section 4 or 5 to the Court to which appeals ordinarily lie under the Code.

(2) The Appellate Court or the High Court in the exercise of its powers of revision may pass any such order as it could have passed under the Code, or may set aside an order under section 4 or 5 and in lieu thereof pass sentence on such offender according to law:

Provided that the Appellate Court or the High Court in revision shall not inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

Provision in case of offender failing to observe condition of release.

8. (1) If the Court before which an offender is bound by his bond under section 5 to appear and receive sentence when called upon, or any Court which could have dealt with the offender in respect of his original offence, has reason to believe that the offender has failed to observe any of the conditions of his bond, it may issue a warrant for his arrest or may, if it thinks fit, issue a summons to the offender and his sureties, if any, requiring him or them to attend before it at such time as may be specified in the summons.

(2) The Court before which an offender is brought or appears under sub-section (1) may either remand him to custody until the case is heard or admit him to bail, with or without sureties, to appear on the date of hearing.

(3) If the Court, after hearing the case, is satisfied that the offender has failed to observe any of the conditions of his bond, including any conditions which may have been imposed under sub-section (2) or sub-section (3) of section 5, it may forthwith—

(a) sentence him for the original offence, or

(b) without prejudice to the continuance in force of the bond, impose upon him a fine not exceeding one hundred rupees:

Provided that the Court passing a sentence of fine under clause (*a*) or (*b*) shall take into account the amount of compensation ordered to be paid under section 6.

(*4*) If a fine imposed under clause (*b*) of sub-section (*3*) is not paid within such period as the Court may fix, the Court may sentence the offender for the original offence.

Provisions as to bonds.

9. The provisions of sections 122, 126A, 406A, 514, 514A, 514B and 515 of the Code, shall, so far as may be, apply in the case of sureties given under this Act. V of 1898.

Appointment of probation officers.

10. (*1*) A probation officer named in a supervision order may be—

(*a*) any person appointed to be a probation officer by the Provincial Government, or

(*b*) any person nominated for this purpose with the previous approval of the Provincial Government by a recognised society, or

(*c*) any other person who, in the opinion of the Court, is a fit person to act as a probation officer in the special circumstances of the case.

(*2*) A probation officer named under sub section (*1*) shall be a person who shall possess such qualifications as may be prescribed by rules made in this behalf.

(*3*) A probation officer, in the exercise of his duties under any supervision order, shall be subject to the control of the District Magistrate of the district in which the offender for the time being resides.

(*4*) The Court before which an offender is bound by his bond under section 5 to appear and receive sentence when called upon, may at any time appoint another probation officer in place of the person named in the supervision order.

[1][*Explanation.*—In this section, in the Greater Bombay, "District Magistrate" means the "Chief Presidency Magistrate", and "district" means the area comprising the Greater Bombay.]

Duties of probation officers.

11. A probation officer shall, subject to the provisions of section 10 and rules made under this Act—

(*a*) visit or receive visits from the offender at such reasonable intervals as may be specified in the supervision order or, subject thereto, as the probation officer may think fit;

(*b*) see that the offender observes the conditions of the bond;

(*c*) report to the Court as to the behaviour of the offender;

(*d*) advise, assist and befriend the offender, and, when necessary, endeavour to find him suitable employment; and

(*e*) perform any other duty which may be prescribed by rules made under this Act.

Variation of conditions of probation on application by probation officer.

12. (*1*) The Court before which any person is bound by a bond under section 5 to appear and receive sentence may at any time upon the application of the probation officer or of its own motion, if it thinks that it is expedient that the terms or conditions of the bond should be varied, summon the offender to appear before it, and, if he fails to show cause why such variation should not be made, vary the terms of the bond by extending or diminishing the duration thereof or by altering any of the conditions thereof or by inserting additional conditions therein:

Provided that, in no case, shall the duration of the bond be less than one year or more than three years from the date of the original order and where a supervision

[1] This explanation was substituted for the original by Bom. 17 of 1945, s. 9 and Sch. E, read with Bom. 52 of 1947, s. 2, proviso.

order has been made under sub-section (*2*) of section 5, the duration of the period of supervision extend beyond the date on which, in the opinion of the Court, the offender shall attain the age of 26 years :

Provided further that in the case of a bond with a surety or sureties, no such variations shall be made without the consent thereto of such surety or sureties and that in the absence of such consent the Court shall in all such cases require the offender to enter into a new bond with or without sureties.

(*2*) Such Court may also, on the application made by the probation officer or of its own motion, on being satisfied that the conduct of the offender has been such as to make it unnecessary that he should be kept any longer under supervision, discharge the bond.

[1][**12A.** All probation officers acting under any of the provisions of this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. Probation officers to be public servants.

XLV of 1860.

12B. No suit, prosecution or other legal proceeding shall be instituted against any person for anything which is in good faith done or intended to be done under this Act]. Protection of persons acting in good faith.

13. (*1*) The Provincial Government may make rules for the purpose of carrying into effect the provisions of this Act. Power to make rules.

(*2*) In particular and without prejudice to the generality of the foregoing power, the Provincial Government may make rules—

(*a*) regulating the appointment, resignation and removal of probation officers and prescribing the qualifications of such officers ;

(*b*) prescribing and regulating the duties of probation officers ;

(*c*) regulating the remunerations and expenses payable to probation officers ; and

(*d*) specifying conditions on which societies may be recognised for the purposes of clause (*b*) of sub section (*1*) of section 10.

(*3*) All rules made under this section shall be subject to the condition of previous publication.

14. In any area in which this Act is in force, no Court shall make an order under section 562 of the Code in respect of any first offender. Barring of operation of section 562 of Act V of 1898.

Bom. XIII of 1924. Bom. XVIII of 1929.

15. Nothing in this Act shall affect the provisions of the [2]Bombay Children Act, 1924, or the Bombay Borstal Schools Act, 1929. Saving of the Bombay Children Act and the Bombay Borstal Schools Act.

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[1] These sections were inserted by Bom. 23 of 1949, s. 3.

[2] See now the Bombay Children Act, 1948 (Bom. 71 of 1948).